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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/702,098	11/05/2003	Joel D. Martz	3070A	6812
7590		08/07/2007		
David M Warren				
655 Oakland Ave.				
Cedarhurst, NY 11516				
EXAMINER				
JUSKA, CHERYL				
ART UNIT		PAPER NUMBER		
1771				
MAIL DATE		DELIVERY MODE		
08/07/2007		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/702,098

Applicant(s)

MARTZ, JOEL D.

Examiner

Cheryl Juska

Art Unit

1771

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 9-22 and 24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 18-22 is/are allowed.
- 6) ☒ Claim(s) 1-7, 9-11, 14-17 and 24 is/are rejected.
- 7) ☒ Claim(s) 12 and 13 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

Response to Amendment

2. Applicant's submission filed on July 2, 2007, has been entered. Claims 1, 2, 9, 10, 12-16, and 18 have been amended as requested. Claims 8 and 23 are cancelled, while new claim 24 has been added.

3. Said amendment is sufficient to withdraw the 103 rejection of claims 1, 6, and 14-17 over the cited Ellis and Irwin references as set forth in section 4 of the last Office Action (Final Rejection mailed July 5, 2006). Specifically, applicant has amended claim 1 to include the limitation of cancelled claim 8. Since claim 8 was not included in the rejection of section 4, said rejection is hereby withdrawn. However, a new rejection based upon the cited Ellis, Irwin, and Higgins references as set forth in the rejection of claim 8 (section 6 of the last Office Action) is applied below.

4. Additionally, the 103 rejection of claims 18-20 as set forth in section 5 of the last Office Action is hereby withdrawn due to said amendment. In particular, independent claim 18 has been amended to incorporate the allowable subject matter of cancelled claim 23, wherein the “further backing layer” comprises “a breathable apertured film.”

Claim Rejections - 35 USC § 103

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 1-7, 9-11, and 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 01/98575 issued to Ellis et al. in view of US 5,612,113 issued to Irwin, Sr. and in further view of US 2002/0142126 issued to Higgins et al.

Ellis discloses a carpet comprising a tufted primary backing, an adhesive backcoat, and a composite secondary backing (abstract). Said composite secondary backing comprises a breathable, liquid impermeable polymeric film adhered to a secondary substrate (abstract). The secondary substrate may be made of natural or synthetic fibers (page 13, line 23, page 16, lines 1-4, and page 19, lines 16-17).

Thus, Ellis teaches the claimed invention with the exception that (a) both the tufting layer and the primary backing layer are permeable to water vapor, (b) the breathable membrane is located between the primary backing and the secondary backing, and (c) a stabilizing layer located between the tufting layer and the breathable membrane. Regarding the first exception, Ellis fails to include an explicit teaching that the tufting layer and the primary backing layer are

permeable to water vapor. However, the examiner asserts that the nature of a tufted primary backing inherently produces permeability.

With respect to the second exception, while Ellis teaches said breathable layer is on the underside of the secondary backing, it would have been readily obvious to one skilled in the art to locate said breathable backing in between the primary backing and secondary backing. Note Irwin which teaches a carpet having a liquid impervious backing located either on the rear side of the primary backing (i.e., in between the primary and secondary backings) or on the rear side of the secondary backing (i.e., as taught by Ellis) (abstract). Thus, it would have been readily obvious to one skilled in the art to modify the location of the breathable, liquid impervious backing of Ellis to be in between the primary and secondary backings since Irwin teaches either location is effective in providing a barrier layer.

Regarding the third exception, Ellis and Irwin fail to teach the inclusion of a stabilizing layer for providing dimensional stability. However, said stabilizing layer is well known in the art of carpets. For example, Higgins teaches a fiberglass stabilizing material located between the primary backing and the secondary backing and bonded thereto by an adhesive (abstract). The stabilizing layer is preferably a fiberglass nonwoven material, but may also be a scrim or woven material (section [0176]). Therefore, it would have been readily obvious to one skilled in the art to employ a stabilizing layer, such as that known in the art and evidenced by Higgins, in the carpet of Ellis in order to impart dimensional stability to the carpet. Hence, claims 1-4, 6, 9, 10, 14, and 15 are rejected.

Claims 5, 7, and 11 are also rejected since the final product of an adhesive layer "fabricated as a water-based adhesive emulsion" is merely an adhesive layer (i.e., no water

present). As such, Ellis clearly teaches the claimed adhesive layer and claims 5, 7, and 11 are rejected as being obvious over the cited prior art.

Regarding claim 16, Ellis fails to teach foam or cushion secondary backings (i.e., “further backing”). However, as taught by Irwin, said secondary backings are well known in the art. Specifically, Irwin teaches foam cushion backings may be substituted for woven secondary backings. Therefore, it would have been obvious to substitute the secondary backing of Ellis with a foam cushion as taught by Irwin in order to provide a cushioned carpet having good comfort and resiliency properties. Hence, claim 16 is also rejected.

Regarding claim 17, while the prior art does not explicitly teach the moisture vapor transmission rate (MVTR) of the breathable layer, it is argued that this property is met by Ellis’s teaching of a breathable layer. Like materials cannot have mutually exclusive properties. Therefore, claim 17 is also rejected.

7. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over WO 01/98575 issued to Ellis et al. in view of US 5,612,113 issued to Irwin, Sr.

New claim 24 is rejected over the cited Ellis and Irwin references. Specifically, Ellis discloses a carpet comprising a tufted primary backing, an adhesive backcoat, and a composite secondary backing (abstract). Said composite secondary backing comprises a breathable, liquid impermeable polymeric film adhered to a secondary substrate (abstract). The secondary substrate may be made of natural or synthetic fibers (page 13, line 23, page 16, lines 1-4, and page 19, lines 16-17).

Thus, Ellis teaches the claimed invention with the exception that (a) both the tufting layer and the primary backing layer are permeable to water vapor and (b) the breathable membrane is

located between the primary backing and the secondary backing. Regarding the first exception, Ellis fails to include an explicit teaching that the tufting layer and the primary backing layer are permeable to water vapor. However, the examiner asserts that the nature of a tufted primary backing inherently produces permeability.

With respect to the second exception, while Ellis teaches said breathable layer is on the underside of the secondary backing, it would have been readily obvious to one skilled in the art to locate said breathable backing in between the primary backing and secondary backing. Note Irwin which teaches a carpet having a liquid impervious backing located either on the rear side of the primary backing (i.e., in between the primary and secondary backings) or on the rear side of the secondary backing (i.e., as taught by Ellis) (abstract). Thus, it would have been readily obvious to one skilled in the art to modify the location of the breathable, liquid impervious backing of Ellis to be in between the primary and secondary backings since Irwin teaches either location is effective in providing a barrier layer. Therefore, claim 24 is also rejected.

Allowable Subject Matter

8. Claims 12 and 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
9. Claims 18-22 are allowed.
10. Said claims contain allowable subject matter because the cited prior art does not teach or suggest the claimed carpet structure including a further (i.e., secondary) backing comprising an *apertured film*.

Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Cheryl Juska/
Primary Examiner, Art Unit 1771